

Group I.

Claims 1, 11 and 21 are included in both groups. The definitions of independent and distinct in M.P.E.P. § 802.01 do not permit a claim to be independent and distinct from itself. "The term 'independent' (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect." Therefore claim 1 cannot be independent of claim 1, because there is a disclosed relationship – it is identical to itself – and it is connected to itself in design, operation and effect. Similarly claims 11 and 21 are not independent of themselves.

Further, claims 8-10, 18-20 and 28-30 are dependent on respective independent claims 1, 11 and 21. Claims 8-10 cannot be independent of claim 1, because they are, by definition, dependent on claim 1. They have a disclosed relationship (incorporating every feature of claim 1), and are connected in design, operation and relationship. Similarly, claims 18-20 are not independent of claim 11, and claims 28-30 are not independent of claim 21.

The examiner's allegation that inventions I and II are related as subcombinations is unfounded, and reflects a misunderstanding of subcombination. M.P.E.P. § 806.04(b) explains that "For example, two different subcombinations usable with each other may each be a species of some common generic invention."

Groups I and II are not distinct subcombinations. Claims 1, 11 and 21 are included in both groups. These claims are not species of some common generic invention; they are the same claims as themselves, and therefore are the same invention.

It appears that the office action has confused the requirements for a proper restriction requirement with those of a requirement for election of species, since it is possible for two distinct species to both be covered by a generic (linking) claim. However, for other types of restriction between independent inventions, that is improper.

Therefore, the requirement for restriction between Groups I and II is improper and must be withdrawn.

The Examiner further requires an election from among the following six species:

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1. Container selected based on lot type and priority.
2. Container selected based on reason for placing the first container in the stocker.
3. Container selected based on respective storage length of the container within the stocker.
4. Second stocker selected based on priority assigned to each stocker
5. Second stocker selected based on utilization of each stocker.
6. Second stocker selected based on destination and alternate destination stocker.

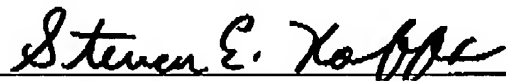
Applicants hereby elect species 1, wherein the container is selected based on lot type and priority. Claims 1, 2, 3, 4, 11, 12, 13, 14, 21, 22, 23, and 24 all read on the elected species. Claims 1, 11 and 21 are generic. Upon allowance of a generic claim, applicants request examination and allowance of dependent claims 2-10, 12-20 and 22-30.

Applicants do not contest that the six species are patentably distinct from each other. Applicants do, however, object to the examiner's reference to the species as "embodiments". Applicants are electing a species, not a single embodiment. The claims are broader than any specific embodiment described in the specification. It is firmly established in patent law that the specification and drawings are exemplary in nature. Other embodiments that fall within the scope and range of equivalents of the claims are also covered.

The Commissioner is also authorized to charge any under payment or credit any over payment to Deposit Account No. 04-1679. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

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